

From: Richard Price
To: Microsoft ATR
Date: 1/27/02 7:55pm
Subject: Microsoft Settlement

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I am addressing this letter to those representing the public interest, pursuant to the Tunney Act's provision that members of the public may comment on the proposed antitrust settlement, particularly with regard to whether the settlement serves the public interest.

Having read the proposed settlement and the associated documentation, I believe that this settlement is both entirely inadequate to address the crimes committed by Microsoft, and contrary to the public interest. The original complaint claims that its intent is to "restrain anticompetitive conduct by defendant Microsoft Corporation" and "to remedy the effects of its past unlawful conduct." The proposed final judgement does neither.

The effects of Microsoft's past unlawful conduct have been to establish an almost unassailable barrier to market entry, and to provide Microsoft with an immense financial windfall by permitting the company to overcharge consumers for its products. While the proposed final judgement does reduce Microsoft's capability for retaliation against competitors, it does little to ensure that Microsoft will not continue to raise barriers against developers of other operating systems that attempt to enable their products to run programs written for Windows; it does little to ensure that innovative companies will be able to reap the fruits of their efforts in the marketplace; and it does not return to the public the billions of dollars in excess revenues extracted from consumers through inflated prices and bundling of unwanted software with other products.

As noted in the original complaint, Microsoft attempts to maintain its monopoly in operating systems and achieve dominance in other markets through use of tie-ins and other anticompetitive agreements that deter innovation, exclude competition, and rob customers of their right to choose among competing alternatives. The effect of the proposed settlement is to legitimize and perpetuate Microsoft's monopoly by permitting Microsoft to continue the same anticompetitive behavior that it used to establish that monopoly in the first place. This monopoly has actually created a situation that is dangerous to the public, as Microsoft's products are both insecure to the point of creating a serious risk to consumer privacy, and so error-ridden as to cause billions of dollars of economic losses to individuals and businesses annually due to lost and damaged data caused by Microsoft programs crashing.

There are many features of the proposed settlement that lead to the conclusion that Microsoft will benefit from the settlement at the expense of the public.

First, Microsoft is not prohibited from intentionally introducing incompatibilities with competing software, as it has done for anticompetitive purposes in the past, most notably in the development stages of Windows 3.1.

In addition, open-source or freely-available software ("freeware") has become a major source of competition in the marketplace. The proposed settlement does not encourage this competition. Microsoft would be permitted to discriminate against these developers by distributing new products and operating system components with restrictions against using them in open-source or freely-available software.

Also, Microsoft produces and distributes for free a number of products that are not part of the Windows operating system, but are restricted in their use to Microsoft operating systems only by licensing terms. This is not justifiable by any technical argument, and serves only to raise a barrier to competitors.

Another way that Microsoft restricts development of competition is through its development tools that are widely used to develop software. Partly because Microsoft has inside knowledge of the operating system,

these tools are among the best available for development. The licenses for these tools include restrictions on using the products developed using the tools on operating systems other than those produced by Microsoft. This restriction is clearly anticompetitive, and is not justifiable by any technical argument.

Finally, the provisions for enforcement and oversight of the final judgement are inadequate. Under the terms as described, Microsoft can evade the intent of the final judgement through abuse of technicalities and loopholes that are not adequately addressed. As an example, the narrowness of the definition of "Microsoft middleware" would permit Microsoft to avoid revealing important programming interfaces, thus hampering efforts by competitors. Important elements of the operating system and applications (file formats, programming techniques) would remain proprietary, either because their documentation would not be required or because Microsoft holds patents on them, and would not be required to license them.

In order to remedy these fatal weaknesses in the proposed settlement, a number of actions are required. First, Microsoft's products must be sold as options in the purchase of new computers, so that the user who does not wish to purchase them is not forced to do so. This means that computer sellers must offer the software without the computer, in order to prevent the current situation in which sellers claim that the price differential is only a few dollars although the cost of the same software from other sources is very high.

Second, Microsoft should be required to expose all programming interfaces with its software -- not only Windows itself, but the numerous products that Microsoft has brought to market dominance by exploiting its illegally maintained monopoly. In addition, all the formats of files used by Microsoft's products should be made publicly and freely available. All information presented by Microsoft under the settlement should be available not only to for-profit companies, but also to open source software initiatives, with no discriminatory licensing requirements.

Third, Microsoft should be prohibited from introducing changes to its software for the sole purpose of inhibiting its competitors, without any technical justification, as determined by independent analysts appointed by the court.

Fourth, if Microsoft makes software freely available, that software should be available to the public as a whole, and not only users of other Microsoft products.

Fifth, Microsoft should not be permitted to place restrictions on the use of its development software that could serve as barriers to competition.

Sixth, Microsoft should be required to return to the public the billions of dollars in revenues that it has acquired due to its illegally maintained monopoly, and to perform this restitution in a fashion that does not reinforce or extend that monopoly.

As a user of an alternative operating system known as OS/2, I am well aware of the damage done to the public interest by Microsoft's abuse of its market power. For over a decade, OS/2 has possessed features that Microsoft has only begun to include in its operating systems in the past few years. In spite of OS/2's clear superiority, Microsoft's anticompetitive behavior effectively shut OS/2 out of the market. Because of this, developers have spent very little effort in developing applications for this platform. My costs for software and training for OS/2 have unquestionably been higher than they would have been if Microsoft had not used illegal and anticompetitive methods to prevent the widespread adoption of this operating system, and the software that is available to me now is of lower quality than would otherwise be the

case. The proposed settlement does nothing to help me recover my investment in this competitive software, or to restore a competitive environment in which OS/2 development would be revived. Millions of other purchasers of OS/2 and other competing products are in the same situation.

As another example, my fiancée uses project management software called Ecco. This software received awards for several years in a row for being the best of its kind. Within a year after Microsoft began bundling its project management software (Microsoft Project) with Windows, the company that owned Ecco ceased development because it could no longer make a profit. The users of this software have also been harmed by Microsoft's illegal practices, and the proposed settlement does nothing to make them whole.

In light of the egregious weaknesses and loopholes in the proposed settlement agreement, and the fact that the proposed agreement therefore cannot be considered to be within the reaches of the public interest, it is my hope that the settlement will be rejected, and a new settlement constructed that eliminates these problems, restores competition to the marketplace, and returns Microsoft's ill-gotten gains to the public from which they were extorted through product tie-ins, exclusionary distribution agreements, and other flagrantly anticompetitive business practices.

Thank you,

Richard Price